INCOMING TELEGRAM

DEPARTMENT OF STATE—DIVISION OF COMMUNICATIONS AND RECORDS

TELEGRAPH BRANCH

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DEPARTMENT OF STATE
L&T
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TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

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FROM: Rome

TO: Secretary of State

NO: 2863, September 20, 6 p.m.

Commercial treaty No. 2 (EMBTEL ~~2777 was No. 1~~). First meeting of negotiating groups September 16 devoted to reading of prepared statements (see my despatch 1622, September 18). At second and third meetings on September 18 and 20, Articles 1 through 7 examined and Italian counterproposals and suggestions submitted. New treaty draft incorporating changes transmitted in Department's instructions 207, September 5, except those in last five paragraphs handed Italians September 18. Reference to text in communications to Department will be in terms of this draft. Italians subsequently informed in accordance with Department's instructions 207 of US willingness to drop choice of laws clause in article 7 and to add exceptions for San Marino and Free Territory Trieste in article 24.

Italians have proposed number of changes in several of articles. More detailed reports on certain of these counter-proposals will be sent Department as soon as they can be fully studied and collateral information assembled. In summary the changes proposed by Italians are as follows:

Article 1, paragraph two (a) except from national treatment rule professions of notary and stock broker as well as lawyer. These officers are invested by law with public functions in Italy.

understanding on this point is to be placed in minutes — Walker says there is actually no problem since this is not intended to cover public officials

Article 1, paragraph four. Incorporate in this paragraph in minutes or in protocol an interpretation of the term "statutes

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"statutes relating to immigration" which would include police regulations relating to foreigners. Italy has no immigration laws but on police controls over the sojourn of aliens.

Article 2. Italians prepared to accept this article without change provided US will agree not contain additional exceptions in paragraph three article 24. These are exceptions from the rule of MFN treatment for advantages which Italy now or hereafter grants to the state of Vatican City and to the former colonies whether colonies are restored in full sovereignty or as trust territories. (It is not entirely clear whether Italians associate these proposals with article 2 for bargaining purposes or merely because of commitments to Vatican re treatment of religious associations established in latter.)

Article 3. Italians prepared to accept this article without change provided they receive assurances that subsidiaries of Italian banking companies (referred to as trust companies) which were incorporated under the laws of New York, Illinois, Pennsylvania and Massachusetts before the war can be reestablished in those states. Department requested initiate necessary action to determine whether there have been changes in laws of those states that would prevent reestablishment of the Italian subsidiaries. Lombardo stated he would wish to amend paragraph two, article 3 to include banking activities if subsidiaries cannot be reestablished under existing law.

Article 4. Accepted without change.

Article 5, paragraph two. With reference to payment of compensation Italians desire an agreed interpretation of the word prompt to make it clear that no interference with normal Italian court procedures for determining compensation is intended. (Decisions are delayed if owner does not accept government valuation of property and seeks remedy in court in which event compensation is not paid until dispute settled.)

Article 5, paragraph two. Italians consider as contrary

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to sound principles of exchange control and therefore unacceptable the rule that the rate of exchange shall be that of the bdate of taking the property. Italian views on this point will be developed more fully in discussions of article 17 and additional protocol. They also wish to drop or modify the phrase "without interference." They contend that any regulations constitute interference.

Article 5, paragraph four. Italians propose deletion of the word "interpreters" or at least an interpretation in minutes of protocol to effect that there is no intention to interfere with procedure under Italian law whereby the court appoints an interpreter for the court from a list of official interpreters.

Article 6. Accepted without change.

real property
The revision suggested for Philippine negotiations was cabled to Rome, as it was designed to meet the same objection the Italians made

Article 7, paragraph one. Italians prepared to accept substance of this paragraph but suggest that it be recast in such a way that the lack of reciprocity be less glaring. They also suggest the desirability of adding a clause providing generally for MFN treatment with regard to immovable property. As a specific amendment they propose the addition of the usual local laws clause after the word "permitted." Department requested transmit redraft of paragraph one with view to meeting first suggestion in first sentence above.

Article 7, paragraph two. Date for determining rate of exchange objected to for same reason referred to in comment on Article 5, paragraph two above.

Provisions of articles 1 through 7 not specifically referred to above acceptable without change.

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